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09/895,027	06/29/2001	Olaf Isele	8610	7458

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EXAMINER

CHANNAVAJJALA, LAKSHMI SARADA

ART UNIT	PAPER NUMBER
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1615

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/895,027
Filing Date: June 29, 2001
Appellant(s): ISELE ET AL.

Eric Addington
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 12-20-04.

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(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences, which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

No amendment after final has been filed.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

(7) *Grouping of Claims*

The rejection of claims 1-3 and 5-21 stand or fall together because appellant's brief does not include a statement that this grouping of claims does not stand or fall together and reasons in support thereof. See 37 CFR 1.192(c)(7).

(8) *Claims Appealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) *Prior Art of Record*

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(10) *Grounds of Rejection*

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-3 and 5-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 00/64502 (hereafter WO).

Instant claims are directed to an article such as a diaper or a sponge, comprising a porous substrate having a contacting surface and an opposing surface, wherein the contacting surface is disposed with a s beneficial agent and a means for minimizing migration of the beneficial agent into the porous substrate, whereby the ratio of the amount of beneficial component present in the top third portion of the substrate is about 2.2 times the amount of the beneficial agent present in the bottom 2/3 portion of the substrate. Dependents claims further define beneficial agents, disposing the beneficial agent in layers and method of top-biasing a composition on a porous substrate. Independent claim 9 recites a first layer of 5% to 95% of beneficial component on the contacting surface followed by a depositing a second layer. Independent claim 16 recites a method of top-biasing article by applying a first layer of relatively hydrophilic component followed by applying a relatively hydrophobic component allowing the first and second layers to cool without formation of an emulsion.

WO teaches an absorbent article having a liquid impermeable outer surface, a middle absorbent portion and a top liquid permeable bodyside liner facing the wearer (see figure 2 of WO). WO teaches that the bodyside liner may be made of woven or nonwoven materials, less hydrophilic to be dry and porous (page 12, lines 15-32). The bodyside liner includes a lotion formulation on the outer bodyfacing surface and is comprised of wax, emollient and a viscosity enhancer that acts as a lubricant to reduce the abrasion of skin caused by liner. The emollient

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lubricates skin and upon transfer to the skin improved skin condition (abstract, page 13, lines 15-22) and includes fatty alcohols, lanolin or lanolin derivatives, petroleum based oils (page 13, lines 22-35). WO teaches waxes for immobilizing the emollient and reduce its tendency to migrate (page 14), viscosity enhancers such as talc, silica, cellulose and modified cellulose derivatives and other skin treating compounds such as glycerin, zinc oxide, etc (page 15 and 16).

WO does not teach the claimed thickness of the beneficial components on the porous substrate i.e., 2.2 times more in the top third portion of the porous substrate than the bottom 2/3 portions. However, WO teaches that the lotion can be applied to the bodyside liner at 0.05-100 mg/sq. cm. Accordingly, it would have been within the scope of a skilled artisan to optimize the amounts of lotion applied on the absorbent applied on the article. The expected result would be a minimum migration of the solidified components applied to the bodyside line. A careful review of the instant specification also reveals that the same end result i.e., minimizing the migration of lotion is achieved by the applicants by incorporating viscosity enhancing agents (page 18) and hydrophobic agents such as wax, both of which are taught by WO. Further, WO states that a z-direction migration loss test shows that the migration of the lotion on the absorbent article is very low. With respect to the claims 9 and 16, WO does not explicitly teach layers of beneficial component or disposing a first hydrophilic layer followed by a hydrophobic layer. However, WO suggests limiting the lotion to restricted areas of the article such that migration to the interior or lateral migration of the absorbent body is not observed. Further, WO teaches applying the lotions to discreet areas as stripes as full length or a portion of the article and further in an add-on level, including the claimed steps of applying the component and solidifying (page 19). WO also teaches deposition of wax, emollients and other viscosity enhancers such as celluloses, silica,

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petrolatum, aloe etc., all of which read on instant hydrophilic components, along with emollients and wax (hydrophobic) in the lotion formulation. WO suggests that the lotion formulation be applied to the entire body face or may be applied selectively to particular sections, so as to provide greater lubricity to such sections and can be applied in stripes (page 18, lines 26-33) and suggests that the lotion formulation leave a greater percentage of the added formulation on the bodyfacing surface of the liner where it can contact and transfer to the wearer's skin to provide a benefit (page 3, lines 1-7). Therefore, it would have been obvious for one of an ordinary skill in the art at the time of the instant invention to apply the lotion composition in a desired thickness or amounts so as to add a greater amount of the lotion on the body facing portion of the liner, with an expectation to exhibit minimum migration because WO suggests that the wax and viscosity enhancer containing lotion solidifies at the site of deposition due to the high melting agents and therefore do not migrate from their position (paragraph bridging pages 2-3). Further, adding the beneficial agents, hydrophobic or hydrophilic or both, in discreet patterns such as layers or stripes etc., and allowing the component to result in a proper composition, such emulsion formation or suspension or solution without affecting the optimum migration of the beneficial components would have been within the scope of a skilled artisan.

(11) *Response to Argument*

Applicant's arguments have been fully considered but they are not persuasive.

Applicants state that they do not dispute the fact that Kryzsis discloses an absorbent article having a bodyside liner including a lotion formulation on the outer bodyfacing surface, wherein the lotion comprising 5-95% by weight of a wax, 5-95% by weight of an emollient, and

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0.1 to 25% viscosity enhancer, has a reduced level of migration and improved transfer to the skin. However, applicants argue that the office has failed to make a prima-facie case for obviousness rejection. Applicants' argue that the instant claims recites a ratio of the beneficial component present on or within the thickness of the substrate and not the thickness of the beneficial components, as characterized by the office. While examiner agrees that the instant claim recites a ratio and not thickness, the rejection still holds good for claimed ratio, based on the teachings of Kryzsik that a greater amount of lotion formulation be added to the bodyside liner, which in other words suggest that the amount of the lotion on the side away from bodyside liner is less than that present towards bodyside liner.

Applicants argue that the office fails to provide any factual basis for the expectation of minimum migration of solidified material applied to the bodyside liner, from the teaching of Kryzsik that the amount of lotion applied is 0.05-100 mg/cm². Applicants also argue that the cited reference fails to teach the ratio of the quantity of the beneficial component (2.2). In response to this argument examiner showed that Kryzsik teaches that the minimum migration of the lotion formulation is no more than 55% (page 17), where it is clearly suggested that preferably the migration loss is no more than 55%, preferably no greater than 40%, more desirably no more than 35%. Thus, it is clear that both instant invention and Kryzsik desire the same result. However, applicants argue that the desiring the same result is immaterial and that the inquiry is on whether Kryzsik teaches or suggests each and every limitation of claim 1. In response to this, although Kryzsik fails to teach the claimed ratio, Kryzsik teaches that the amount of the lotion to be added, the minimum migration that is expected from the added lotion and also that a greater percentage of the added formulation is on the bodyfacing surface of the

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liner where it can contact and transfer to the wearer's skin to provide a benefit (page 3, lines 1-7), thus suggesting that the amount of lotion added on the absorbent article is more towards the body liner. Instant claim 1 states that the ratio of the quantity of the beneficial component present on or within the thickness between 0 and $Z/3$ of the substrate is at least 2.2 times the quantity of the component within the thickness between $2Z/3$ and Z of the substrate. In other words, the claim requires a greater amount (2.2 times) of the beneficial component on the top $1/3$ portion of the substrate than on the bottom $2/3$ of the substrate. As explained in the previous sentences, Kryzsik also suggests that the lotion formulation leave a greater percentage of the formulation on the bodyfacing surface of the liner where it can contact and transfer to the wearer's skin to provide a benefit. Kryzsik further suggests that by doing so, the composition does not migrate into the liner and absorbent body of the article (page 3, lines 1-4) and hence it is in contact with the skin so to provide the wearer of the article the benefit of the lotion components.

Applicants' argument that the office impermissibly picks and chooses portions of Kryzsik and equates the Z-direction migration test (of Kryzsik) with that of the claimed ratio is not persuasive because, while Kryzsik teaches that adding a greater amount of lotion on the bodyside liner so as to reduce migration in to the article, Kryzsik mentions the Z-directional migration test to measure the amount of the lotion migrated. Thus, Kryzsik suggests the principle of applying more lotion on the bodyside liner as well as a way to measure the same. The reference has been considered in its entirety for the teachings and the office did not pick and choose portions of the reference.

With respect to applicants' argument regarding the layers of beneficial component, instant claim 1 only states first and second layer, but does not require that the two layers be

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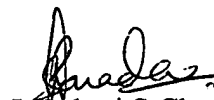
different. This assumption is further supported by claim 5, which requires both layers to be distinct. In other words, it is only in claim 5 and not claim 1 that both layers need to be different. Further, as explained before, if the both layers are to contain the same beneficial component, the process of layering the beneficial component only results in mixing up of the components and the layers do not remain distinct. Moreover, instant specification states (page 16) that the hydrophilicity and hydrophobicity of the first and second layers is not critical. Further, applicants have not shown any unexpected results with the beneficial component being in the form of layers as opposed to being applied as a single composition. Accordingly, incorporating the beneficial component on the article as a single (layer) component or as different layers by routine optimization would be within the gambit of a skilled artisan. Applicants' argument that Kryzsisik does not support incorporating beneficial component in the form of layers is incorrect because on page 13, starting at line 2, Kryzsisik teaches treating the surface of the article with a surface-active agent (constituting first beneficial layer), followed by lotion formulation (second beneficial agent). Thus Kryzsisik does teach adding two layers of beneficial components. With respect to the unexpected results described on page 23 of the specification, mentioned by applicants, the results are specific to water and glycerin and do not include any of the beneficial agents that claimed. Kryzsisik teaches emollients and viscosity enhancers, the latter group comprising polymers such as cellulose, which are also hydrophilic. Further, it has been admitted that the "relative" hydrophilicity or hydrophobicity is not critical and accordingly, choosing the desired beneficial component and in optimum concentrations in the article of Kryzsisik, so as achieve the desired benefit of providing the emollients or lubricants to the skin of the wearer would have been within the scope of a skilled artisan.

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Therefore, the rejection has been maintained.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,



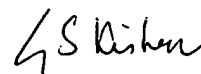
Lakshmi S Channavajjala
Examiner
Art Unit 1615

February 2, 2005

Conferees



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